

ORIGINAL

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

In the Matter of )

Amendment of Section 73.622(i), )  
 Final DTV Table of Allotments, )  
 Television Broadcast Stations )  
 (Greenville, North Carolina) )

MB Docket No. 08-133  
 RM-11465

To: The Secretary,  
 Federal Communications Commission

**FILED/ACCEPTED**

**SEP - 8 2008**

Attn: Chief,  
 Video Division,  
 Media Bureau

Federal Communications Commission  
 Office of the Secretary

**REPLY COMMENTS**  
**OF ESTEEM BROADCASTING OF NORTH CAROLINA LLC**

Esteem Broadcasting of North Carolina LLC ("Esteem"), the licensee of television broadcast station WYDO-DT, Greenville, North Carolina, by its attorneys, hereby submits its Reply Comments in response to the Comments of Capitol Broadcasting Company, Inc. ("Capitol") filed in the above-captioned proceeding. In this proceeding, the Media Bureau, at the request of Esteem, proposes amendment of Section 73.622(i) of the Commission's rules, the Final DTV Table of Allotments, to substitute Channel 47 for 14 at Greenville.

In its comments, Capitol posits that geographic spacing requirements apply to proposals for DTV channel substitutions and, because Esteem's proposal does not demonstrate compliance with such requirements, it should be denied. In the alternative, Capitol asks that Esteem's proposal be held in abeyance until action is taken on a pending petition for reconsideration of *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, 23 FCC Rcd 2994 (2007) ("Third Periodic R&O"), filed by

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the engineering firm Cohen, Dippell and Everist, asking *inter alia* for clarification whether the applicable standard for channel substitutions is geographic spacing or interference protection.<sup>1</sup> For the reasons set forth below, Esteem submits that the positions asserted in Capitol's Comments should be rejected and that Esteem's proposal should be adopted by the Commission without delay.

**I. INTERFERENCE PROTECTION IS THE COMMISSION'S TECHNICAL STANDARD FOR EVALUATING DTV CHANNEL CHANGE PROPOSALS.**

In *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Notice of Proposed Rulemaking, 22 FCC Rcd 9478 (2008) ("Third Periodic NPRM"), the Commission proposed a 0.5 percent interference protection standard for examining applications for post-transition DTV facilities. The Commission stated:

When evaluating applications to construct post-transition facilities, we propose to use an interference protection requirement based on engineering criteria (e.g., permissible interference) rather than a geographic spacing requirement. We believe this will allow for a more flexible design of proposed stations while offering a high level of protection to existing authorized service. . . . Where authorized DTV stations wish to change their assigned DTV channels through a rulemaking petition, we also believe applying the proposed engineering criteria is appropriate. On the other hand we continue to believe that geographic spacing requirements represent the preferred approach for evaluating a petition for rulemaking requesting a *new* DTV allotment. . . . We propose to . . . use geographic spacing requirements *only for rulemaking petitions seeking new DTV channel allotments*.<sup>2</sup>

The Commission made clear its intention that an interference protection standard applies to channel change or substitution proposals such as Esteem's (putting such proposals on par with

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<sup>1</sup> Petition for Reconsideration of Cohen, Dippell and Everist, P.C., in the matter of Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion, MD Docket No. 07-91 (filed Feb. 29, 2008) (hereinafter "CDE Petition").

<sup>2</sup> Third Periodic NPRM at ¶ 103 (emphasis added).

post-transition DTV facility modification applications), that proposals for new allotments would be subject to geographic spacing evaluation and that it considered the two types of proposals to be different categorically.

In the Third Periodic R&O, the Commission adopted the interference standards and methodologies proposed in its Third Periodic NPRM, including the 0.5 percent interference protection standard applicable to DTV channel change proposals, now codified at Section 73.616 of the Commission's rules. The Commission also further distinguished between channel change proposals and proposals for new channel allotments by clarifying that new allotments would be subject to the Commission's geographic spacing *and* interference protection requirements.<sup>3</sup>

As the Engineering Statement supporting Esteem's Petition for Rulemaking demonstrated, and as the Commission noted in the Greenville NPRM, Esteem's proposed operation of WYDO-DT on channel 47 at Greenville meets the technical requirements of Sections 73.625(a) (principal community contour) and 73.616 (interference protection) of the Commission's rules. Capitol does not dispute that Esteem's proposal satisfies these requirements.

Moreover, the tepid nature of Capitol's position that the geographic spacing requirements also apply to Esteem's channel change proposal is evidenced by its argument in the alternative that action on Esteem's proposal should be held in abeyance until action on the CDE Petition. That Petition itself advocates for an affirmative statement from the Commission clarifying that only the 0.5 percent interference standard (and not the geographic separation requirement) applies to channel change proposals.<sup>4</sup>

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<sup>3</sup> See Third Periodic R&O at ¶ 161.

<sup>4</sup> CDE Petition at 8.

Based on the foregoing, Esteem submits that its channel change proposal for WYDO-DT meets the Commission's requirements applicable to the evaluation of such a proposal and asks that the Commission rule accordingly.

**II. EVEN IF THE COMMISSION'S RULES COULD BE INTERPRETED TO REQUIRE GEOGRAPHIC SPACING FOR CHANNEL CHANGE PROPOSALS, ESTEEM CAN PROPOSE A FULLY-SPACED ALLOTMENT POINT.**

As demonstrated by the attached Engineering Statement of Chesapeake RF Consultants, LLC, if required, Esteem could specify an allotment point at 35° 26' 11" North Latitude and 77° 19' 40" West Longitude for Esteem's proposed operation of WYDO-DT on Channel 47 at Greenville.

**WHEREFORE**, for the reasons stated herein, including the attached Engineering Statement of Chesapeake RF Consultants, LLC, Esteem respectfully requests that the Commission reject the Comments filed by Capitol in the above-captioned proceeding and adopt the proposal contained in the Commission's NPRM, to amend the Final DTV Table of Allotments to substitute channel 47 for 14 at Greenville, North Carolina.

Respectfully submitted,

**ESTEEM BROADCASTING OF  
NORTH CAROLINA LLC**

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Its Attorneys

September 8, 2008



## **Engineering Statement**

prepared for

### **Esteem Broadcasting of North Carolina LLC**

WYDO-DT Greenville, NC

MB Docket 08-133

This engineering statement has been prepared on behalf of *Esteem Broadcasting of North Carolina LLC* ("*Esteem*"), licensee of WYDO(TV) (Facility ID 35582, Greenville, NC) in support of Reply Comments to a *Notice of Proposed Rulemaking* ("*NPRM*") in MB Docket 08-133.<sup>1</sup> The NPRM would substitute Channel 47 in lieu of Channel 14, at *Esteem's* request, for the post-transition digital operation of WYDO.

The underlying petition for rulemaking specified use of the certified WYDO site location<sup>2</sup> and antenna height, with an increase in effective radiated power. A detailed interference study per OET Bulletin 69<sup>3</sup> was provided which showed that the proposal complies with the 0.5 percent limit of new interference caused to the Appendix B facilities and post-transition authorizations of pertinent nearby stations. Additionally, protection requirements towards authorized Class A stations were also satisfied.

In its comments, *Capitol Broadcasting Company, Inc.* ("*Capitol*"), licensee of WRAL-TV (Facility ID 8688, Raleigh, NC), raised the issue of the use of minimum distance separation requirements. WRAL-DT will operate on Channel 48 in the post-transition period. *Capitol* did not object to the interference analysis accompanying the petition which concluded that the

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<sup>1</sup> "Amendment of Section 73.622(i), *Final DTV Table of Allotments, Television Broadcast Stations (Greenville, North Carolina)*" MB Docket 08-133, DA 08-1588, released July 3, 2008.

<sup>2</sup> A two-second change in geographic coordinates was specified in order to conform to the WYDO tower's Antenna Structure Registration data (#1002798).

<sup>3</sup> FCC Office of Engineering and Technology Bulletin number 69, *Longley-Rice Methodology for Evaluating TV Coverage and Interference*, February 6, 2004 ("OET-69"). The implementation of OET-69 for this study followed the guidelines of OET-69 as specified therein. A standard cell size of 2 km was employed. Comparisons of various results of this computer program (run on a Sun Sparc processor) to the Commission's implementation of OET-69 show excellent correlation.

proposal satisfies the FCC's 0.5 percent limit on new interference to WRAL-DT and other stations pursuant to §73.616(e) (the "interference" criteria). Rather, *Capitol* showed that the WYDO Channel 47 proposal's site is located 108.1 km from WRAL-DT and complains that the proposal does not satisfy the 110 km minimum distance specified in §73.623(d) and referenced in §73.616(b) for first-adjacent digital television stations (the "distance" criteria).

During the transition, the Commission has consistently applied the interference criteria regarding channel changes for existing allotments. The distance criteria have only been employed for proposals to add new allotments, not for proposals to change existing allotments.

Similar to the process employed during the transition period, the Third Periodic Review<sup>4</sup> indicates that the distance criteria will also be applied in the post-transition period to new allotment proposals, and once the allotment is established then the interference criteria will be applied at the application stage. For a new allotment, the Commission stated that

"information about actual transmitter site locations and facilities are generally not available in rulemaking proceedings. Without such information, valuations based on minimum acceptable allotment facilities and the methodology for the analysis of a petition using an engineering criteria standard would not reflect the operation of an actual station and therefore would generally not be meaningful. For these reasons we will continue to use the DTV-to-DTV geographic separation requirements contained in Section 73.623(d) of the rules. After a new DTV allotment has been approved, we will regulate the extent of interference by requiring applications for these DTV allotments to comply with the same engineering criteria standards we are proposing for all other DTV applications."

Importantly, the Third Periodic Review did not indicate any change in the customary procedure of employing the interference criteria for *changes to an existing* post-transition allotment. Only *new* allotments are discussed with respect to the distance criteria. For the case at hand, *Esteem* proposed use of the current WYDO transmitter site and antenna height, therefore detailed data regarding the actual transmitter site is known and the interference evaluation results

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<sup>4</sup>*Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07-91, FCC 07-228, released December 31, 2007, at para. 161.

## Engineering Statement

Esteem Broadcasting of North Carolina LLC

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Chesapeake RF Consultants, LLC

Radiofrequency Consulting Engineers

Digital Television and Radio

are meaningful. Further, *Capitol's* comments implicitly acknowledge that the distance criteria may not be applicable in the case of a channel change, as *Capitol* references a pending Petition for Reconsideration of the Third Periodic Review that seeks to clarify that the interference criteria are intended to be employed.

Even if the distance criteria are applied to *Esteem's* proposed channel change, a fully-spaced allotment point does exist and is identified herein. As depicted in **Figure 1**, a large area near Greenville is fully-spaced to all post-transition stations. The following geographic coordinates represent a fully-spaced point within this area (see **Figure 1**) and can be considered an allotment point if necessary.

### Fully-Spaced Allotment Point

35° 26' 11" N-Lat

77° 19' 40" W-Lon

(NAD-27)

**Table 1** supplies a spacing study showing that this allotment point satisfies the minimum distance separations listed in §73.623(d) with respect to all post-transition digital allotments, authorizations, and applications. Protection requirements towards authorized Class A stations are also satisfied. As demonstrated in **Figure 1**, the allotment point would easily encompass the principal community with 48 dBμ contour, in compliance with §73.625(a)(1).

Thus, it is shown that a fully-spaced allotment point does exist for *Esteem's* proposed substitution of Channel 47 for WYDO's Channel 14 at Greenville, NC. Further, use of the current WYDO site complies with the interference criteria, based on the technical parameters supplied in *Esteem's* underlying petition for rulemaking. Should the Commission adopt the proposed channel change, *Esteem's* subsequent Application for Construction Permit to implement Channel 47 will specify facilities that comply with the interference standard, as the distance criteria are not applied at the application stage.

**Certification**

The undersigned hereby certifies that the foregoing statement was prepared by him or under his direction, and that it is true and correct to the best of his knowledge and belief.



Joseph M. Davis, P.E.  
September 3, 2008

**Chesapeake RF Consultants, LLC**  
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703-650-9600

List of Attachments

Figure 1	Full Spacing Allocation Map
Table 1	Full Spacing Allotment Point - §73.623(d) Allocation Spacing Study



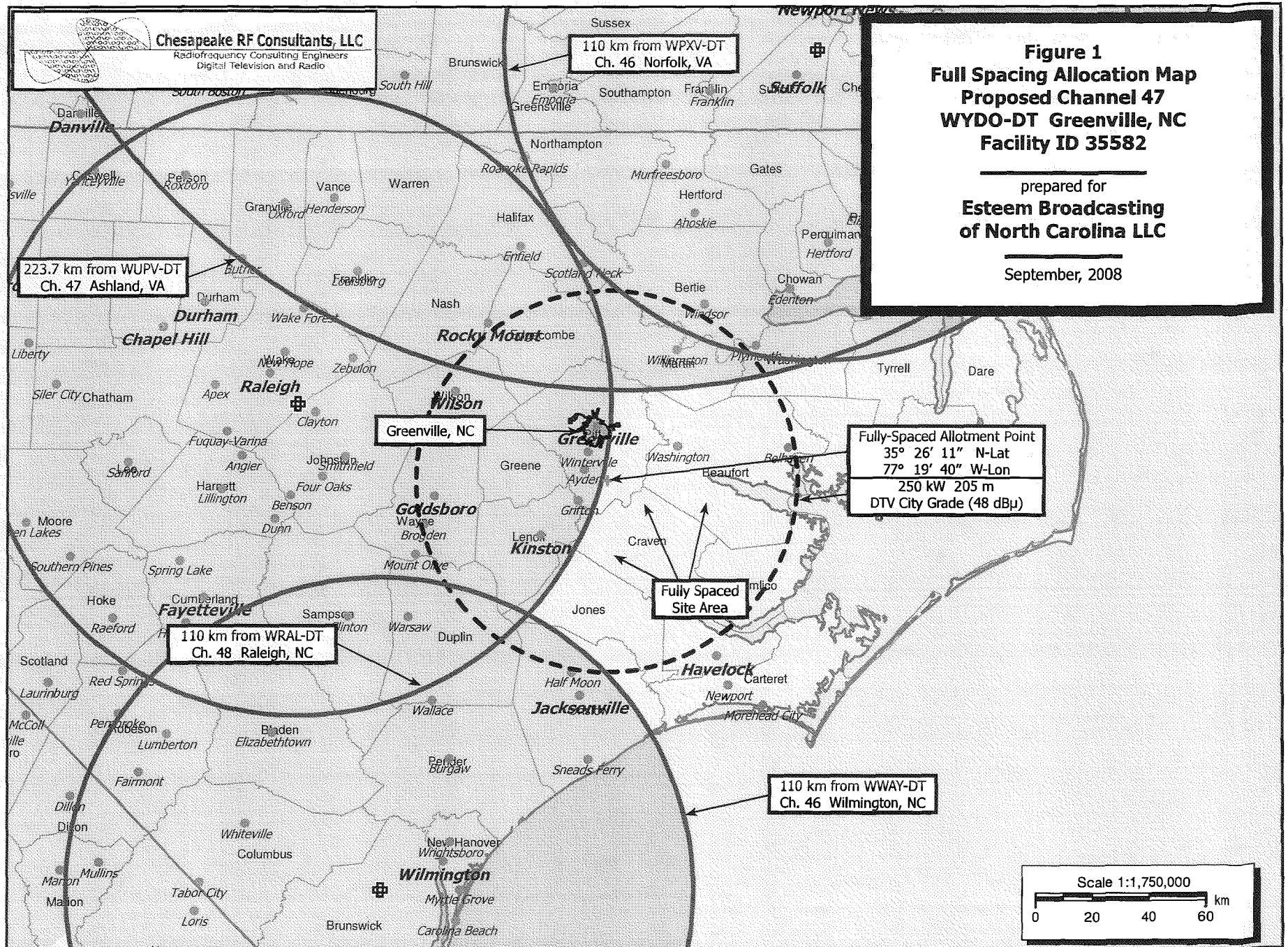


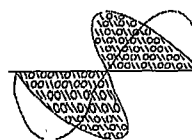
Table 1

**Full Spacing Allotment Point  
§73.623(d) Allocation Spacing Study**

prepared for

**Esteem Broadcasting of North Carolina LLC**

WYDO-DT Greenville, NC



**Chesapeake RF Consultants, LLC**

Radiofrequency Consulting Engineers

Digital Television and Radio

Post-Transition Database

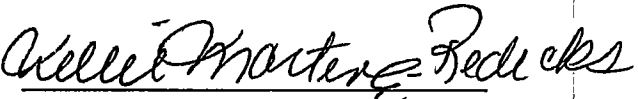
Allocation for Channel 47 as Class DTV Zone II at 35°26'11", 77°19'40"

Channel Status	Call Service	Sign File Number	City/State	Fac. ID	Latitude Longitude	Power HAAT	Distance Bearing	Required Clear
46 REF	WWAY DT	WILMINGTON, NC APPENDIX B		12033	34 07 51 78 11 16	1000.0 594	164.84 208.66	110.00 54.84
46 LIC	WWAY DT	WILMINGTON, NC BLCDT-20051221AOQ		12033	34 07 53 78 11 17	1000.0 590	164.80 208.68	110.00 54.80
46 REF	WPXV DT	NORFOLK, VA APPENDIX B		67077	36 48 31 76 30 13	1000.0 360	169.38 25.64	110.00 59.38
46 LIC	WPXV DT	NORFOLK, VA BLCDT-20020510AAI		67077	36 48 31 76 30 13	1000.0 360	169.38 25.64	110.00 59.38
47 REF	WUPV DT	ASHLAND, VA APPENDIX B		10897	37 44 31 77 15 15	1000.0 249	255.93 1.45	196.30 59.63
47 LIC	WUPV DT	ASHLAND, VA BLCDT-20060210ABA		10897	37 44 31 77 15 15	1000.0 249	255.93 1.45	196.30 59.63
48 REF	WRAL-TV DT	RALEIGH, NC APPENDIX B		8688	35 40 29 78 31 39	916.0 629	111.95 284.07	110.00 1.95
48 CP	WRAL-TV DT	RALEIGH, NC BPCDT-20080319AAE		8688	35 40 29 78 31 40	1000.0 629	111.97 284.07	110.00 1.97
48 APP	WRAL-TV DT	RALEIGH, NC BMPCDT-20080618AAD		8688	35 40 29 78 31 40	1000.0 629	111.97 284.07	110.00 1.97

**CERTIFICATE OF SERVICE**

I, Nellie Martinez-Redicks, a secretary at the law firm of Drinker Biddle & Reath LLP, certify that on this 8th day of September 2008 I caused the foregoing Reply Comments of Esteem Broadcasting of North Carolina LLC to be served by first-class mail, postage pre-paid, on the following:

David A. O'Connor  
Wilkinson Barker Knauer LLP  
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Nellie Martinez-Redicks